

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4135 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

REKHABEN VITHALBHAI RAWAL

Versus

BANASKANTHA DISTRICT EDUCATIONCOMMITTEE

Appearance:

MR JD AJMERA for Petitioner
MR HS MUNSHAW for Respondent No. 1
SERVED for Respondent No. 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/09/97

ORAL JUDGEMENT

The petitioner before this Court is a primary teacher serving under Banaskantha District Education Committee, the respondent no. 1 herein (hereinafter referred to as "the Committee").

2. The petitioner joined service on 21st March, 1978. Under the order dated 1st September, 1992 made by the Committee the petitioner was granted the benefit of higher grade in pay scale of Rs. 1400-2600 with effect from 1st June 1987. The petitioner's pay was fixed accordingly and the petitioner has been paid difference of salary also. It appears that under order dated 14th July, 1993 the said order dated 1-9-1992 was kept in abeyance. However, the order dated 14th July, 1993 was not implemented. The Committee, therefore, on 19th August, 1996 made an order cancelling the above referred order dated 1st September, 1992 and directed the recovery of the amount of difference of salary for the period from 1-6-1987 to 31-7-1996 to be made. Pursuant to the said order dated 19th August, 1996 the respondent no. 2 made the order dated 19th September, 1996 directing the recovery of a sum of Rs. 33,879/- being the amount of difference of salary for the period from 1-6-1987 to 31-7-1996. Feeling aggrieved, the petitioner has preferred this petition.

3. The petitioner has contended that the petitioner was serving continuously as a primary teacher since 21st March, 1978 and she was, therefore, rightly granted the benefit of higher grade with effect from 1st June 1987. There is no reason why the benefit of higher grade granted to the petitioner should be kept either in abeyance or be cancelled. She has contended that before withdrawing the benefit of higher grade granted to the petitioner neither the petitioner has been given opportunity to show cause against the proposed action nor she has been given opportunity of personal hearing. It is, therefore, contended that the impugned orders dated 19th August, 1996 and 19th September, 1996 are vitiated on account of breach of principle of natural justice.

4. It appears that being aggrieved by the impugned orders dated 19th August, 1996 and 19th September, 1996 the petitioner has preferred an appeal before the District Education Board pending which the petitioner has preferred this petition under Article 226 of the Constitution of India. That appeal has been preferred by the petitioner on 18th November, 1996. The contentions raised by the petitioner are not controverted by either of the respondents. However, since the petitioner has preferred an appeal before the District Education Board which is pending before it, the petitioner may pursue the said remedy. This petitioner under Article 226 of the Constitution of India is, therefore, not maintainable.

5. Notice was directed to be issued to the

respondents on 11-6-1997 and this Court had ordered stay against the recovery. The said order has been continued till today. I am of the view that since the said order has been operating till today, the same should be operated pending the appeal before the District Education Board. It is, therefore, directed that the above referred ad-interim order made on 11th June, 1997 shall continue to operate till the District Education Board, Palanpur, decides the appeal preferred by the petitioner before it on 18th November, 1996 and for a further period of 15 days from the date of communication of the order of the District Education Board, Palanpur to the petitioner.

6. Subject to the above directions, the petition is dismissed. Rule is discharged. There shall be no order as to costs.

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JVSATWARA.